

The EU (Notification of Withdrawal) Bill: Bargaining Chips on the Commons Table

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On 8th February, the [EU \(Notification of Withdrawal\) Bill](#) passed Third Reading in the House of Commons, by [494 votes to 122](#). MPs rejected all [amendments](#) to the 133-word Bill. This post concerns the rejection, [by 332 votes to 290](#) of an amendment tabled by Harriet Harman, Chair of the Joint Committee on Human Rights (JCHR), designed to ensure that post-Brexit rights of non-UK EU citizens 'lawfully resident in the UK on 23 June 2016' will be guaranteed *before* the triggering of [Article 50](#) and *irrespective* of the outcome of negotiations between the UK and Union institutions.

Only three Conservative MPs voted for the amendment, after the Home Secretary had sent [a letter](#) to select MPs assuring them that 'nothing will change for EU citizens, whether already resident in the UK or moving from the EU, without Parliament's approval'. The Government was joined by the DUP, UKIP, and six Labour MPs, including Gisela Stuart. Stuart, former Chair of 'Vote Leave', chaired a [British Future](#) Inquiry into '[Securing the status of EEA+ nationals in the UK](#)'. The Inquiry's December 2016 report concluded that 'retrospective changes to [EEA+ nationals'] status are unfair as [those] who have settled in the UK could legitimately expect their status to remain secure when they moved here... The Inquiry recommends, as a cut-off date, the day that Article 50 is triggered'. Notably, this is a *later* 'cut-off' date than Harman's amendment.

The follies of the Government's reciprocity argument

There are substantive difficulties with the Government's insistence on reciprocity, as reflected in Section 6 of its [White Paper](#). The Commons [debate](#) revealed little zeal among MPs for making non-UK EU citizens' status *conditional* upon reciprocity, let alone desire for *en masse* expulsion, should negotiations fail.

First, the claim that the Government is protecting UK citizens residing in the EU-27 by refusing to unilaterally and unconditionally give non-UK EU citizens the reassurance they seek is fanciful (I [have written](#) about their future status). Organisations representing UK citizens resident in Germany, Gibraltar, France, Spain, Finland, and Belgium signed a joint [letter](#) to the PM urging her to unilaterally offer guarantees to non-UK EU citizens. There is no evidence of hostility against UK citizens in the EU-27, and assigning blame to Union institutions for supposedly refusing to reach a reciprocal agreement before the UK serves its Article 50 notification is a red herring.

Second, the Government cannot have it both ways: if the fate of non-UK EU citizens will not depend on the outcome of the negotiations, the refusal to remove the uncertainty and to clarify the 'cut-off' date before negotiations commence is puzzling. The Government's insistence on reciprocity logically implies that, if negotiations fail, rights of non-UK EU citizens *may be curtailed*. In 2017, such a 'bargaining chips' approach is [morally indefensible](#).

Third, whereas it is within the unilateral gift of Westminster to secure the status and rights of non-UK EU citizens irrespective of the withdrawal agreement, reciprocity *ipso facto* requires agreement, and it is far from certain that it will be reached at an early stage of the negotiations.

It bears mentioning that non-UK EU citizens (except Maltese, Cypriot, and Irish citizens), and UK citizens who have been residing abroad for more than 15 years, [were not eligible to vote in the 23rd June 2016 referendum](#), despite being (among) those most directly and adversely affected by its outcome ([analysis](#)).

The road ahead

The Bill now moves to the House of Lords. A [#RightToStay Mass Lobby of Parliament](#), co-organised by [the 3 Million](#) and [New Europeans](#), will take place on 20th February, coinciding with the 'One Day without Us' National Day of Action and, intriguingly, with the Bill's [Second Reading in the Lords](#).

Several Peers have already tabled [amendments](#) to the Bill, including in relation to non-UK EU citizens. One [replicates the JCHR stipulation](#), whereas another [extends beyond 'rights of residence' also to 'other rights enjoyed by EU citizens'](#). The Government, which does not have a majority in the Lords, issued thinly veiled [threats](#) that the future of the upper house is at risk were Peers to scupper Brexit; since securing the rights of non-UK EU nationals does not stand in the way of triggering Article 50, one remains hopeful that an amended Bill will be sent back to the Commons.

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